



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Claims Against the Dealer Bond
of Road America Auto Sales, LLC

Case No: DOT-15-0021

PRELIMINARY DETERMINATION

On May 22, 2015, Karen Pluskat filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Road America Auto Sales, LLC., (Dealer). Pursuant to the procedures set forth at Wis. Admin. Code § Trans 140.26, a Public Notice to File Dealer Bond Claims was published in The Reporter, a newspaper published in Fond du Lac County, Wisconsin. The notice informed other persons who may have claims against the Dealer to file them with the Department by November 23, 2015. No additional claims were filed. Ms. Pluskat's claim was forwarded by the Department to the Division of Hearings and Appeals. This Preliminary Determination is based on the documents in the file and constitutes the preliminary determination required by Wis. Admin. Code § Trans 140.26(4)(a).

In accordance with Wis. Stat. § 227.47 and 227.53(1)(c) the PARTIES to this proceeding are certified as follows:

Karen Pluskat
616 South 26th Street
Sheboygan, WI 53081

Road America Auto Sales, LLC
Jafar Nikkhah
W665 State Road 23
Saint Cloud, WI 53079-1535

International Fidelity Insurance Company
One Newark Center
Newark, NJ 07102

Findings of Fact

1. Road America Auto Sales, LLC. (Dealer) was licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's facilities were located at W665 State Road 23, St. Cloud, Wisconsin. The Dealer was placed out of business on February 1, 2015. Jafar Nikkhah was the manager of the Dealer.

2. The Dealer has had a bond in force satisfying the requirements of Wis. Stat. § 218.0114(5) from December 17, 2012, until December 16, 2013. (Bond # BUFSU0604848 from International Fidelity Insurance Company)

3. On December 13, 2014, Karen Pluskat (Pluskat) purchased a 2004 Audi A4 automobile, vehicle identification number WAULT68E64A068999, from the Dealer. According to the purchase contract, Pluskat paid \$8,479.50 for the automobile including taxes and registration fees.

4. The Wisconsin Buyers Guide displayed on the vehicle at the time it was offered for sale by the Dealer indicated no problems with the vehicle and that all equipment was legal. However, before she purchased the vehicle the Dealer disclosed to Pluskat that the catalytic converters were missing. Pluskat indicated that she was interested in the vehicle but that it would have to be able to pass an emission test. The Dealer offered Pluskat a warranty that would cover the cost of installing catalytic converters. Pluskat then purchased the vehicle and took delivery of the vehicle on December 17, 2014, with the understanding that she would bring it back to the Dealer to have the catalytic converters installed after they came in.

5. The vehicle broke down three weeks after Pluskat purchased it and she had to have it towed to a repair shop. Pluskat contacted the Dealer numerous times about the problems she was having with the vehicle and asked when the catalytic converters would be installed. After getting the run around from the Dealer regarding the catalytic converters from the Dealer for a few months, the Dealer offered Pluskat \$500 towards the cost of having the catalytic converters installed. Pluskat rejected this offer. On April 22, 2015, Pluskat filed a complaint with the Department's Dealer Section against the Dealer. Prior to receiving the complaint, the investigator assigned to the complaint was contacted by Jafar Nikkhah. Mr. Nikkhah explained the situation and informed the investigator that he was unable to pay for the repairs to Pluskat's vehicle.

6. The investigator was unable to resolve Pluskat's complaint and on May 22, 2015, she filed a claim against the surety bond of the Dealer. The claim is in the amount of \$1,858.45, the cost of having catalytic converters installed in her vehicle.

7. Licensed motor vehicle dealers are required by Wis. Admin. Code § Trans 139.04(5)(a) to disclose "whether the condition of a vehicle for sale is such that it can be legally operated" in accordance with Wisconsin statutes and regulations. Pursuant to Wis. Admin. Code § Trans 139.04(6), Dealers are required to make this disclosure in writing on the Wisconsin Buyers Guide displayed on the vehicle. The Dealer failed to disclose the missing catalytic converters in writing on the Wisconsin Buyers Guide in violation of Wis. Admin. Code §§ Trans 139.04(5)(a) and (6)(a). The Dealer apparently did warn Pluskat about the vehicle's lack of catalytic converters orally, but failed to follow through on an agreement to install the catalytic converters after she purchased the vehicle.

8. The Dealer's failure to disclose a significant existing defect of the vehicle on a Wisconsin Buyers Guide constitutes a violation of Wis. Admin. Code §§ Trans 139.04(5)(a) and

(6)(a). Violations of these sections, in turn, constitute a violation of Wis. Stat. §§ 218.0116(1)(bm) and/or (gm). Pluskat sustained a loss as the result of this violation.

9. Pluskat filed a bond claim within three years of the ending date of the period the International Fidelity Insurance Company bond was in effect and it is, therefore, a timely claim.

10. Pluskat sustained a loss of as a result of the Dealer's violation of Wis. Stat. § 342.16(1). The loss sustained by Pluskat was caused by an act of the Dealer that would be grounds for the suspension or revocation of his motor vehicle dealer license. Accordingly, the claim is allowable. Pluskat submitted documentation to support a claim in the amount of \$1,858.45, the cost of having catalytic converters installed in her vehicle.

DISCUSSION

The procedure for determining claims against dealer bonds is set forth at Wis. Admin. Code Chapter Trans 140, Subchapter II. Wis. Admin Code § Trans 140.21(1) provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.0116 (1) (a) to (gm), (im) 2., (j), (jm), (k), (m) or (n) to (p), Stats.

(d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Accordingly, to allow the claim filed against the security bond of the Dealer, a finding must be made that the Dealer violated one of the sections of Wis. Stat. § 218.0116(1) identified in Wis. Admin. Code § Trans 140.21(1)(c)1, and that the violation caused the loss claimed. With

respect to the claim filed by Pluskat, the Dealer violated Wis. Admin. Code §§ Trans 139.04(5)(a) and (6)(a). Violations of these sections, in turn, constitute a violation of Wis. Stat. §§ 218.0116(1)(bm) and/or (gm). Wis. Stat. §§ 218.0116(1)(bm) and (gm) are identified in Wis. Admin. Code § Trans 140.21(1)(c)1 as violations upon which a claim against a motor vehicle dealer's bond can be based. Pluskat sustained a loss as a result of the violation.

CONCLUSIONS OF LAW

1. Karen Pluskat's claim arose on December 13, 2014, the date she purchased the subject vehicle from the Dealer. The surety bond issued to the Dealer by International Fidelity Insurance Company covers a one-year period commencing on December 16, 2013. The claim arose during the period covered by the surety bond.
2. On February 2, 2015, Karen Pluskat filed a claim against the motor vehicle dealer bond of the Dealer. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d)' the claim is timely.
3. Karen Pluskat's loss was caused by an act of the Dealer that would be grounds for suspension or revocation of his motor vehicle dealer license. Karen Pluskat has submitted documentation to support a claim in the amount of \$1,858.45. Pursuant to Wis. Admin. Code § 140.21(1)(c), the claim is allowable.
4. The Division of Hearings and Appeals has authority to issue the following order.

ORDER

The claim filed by Karen Pluskat against the motor vehicle dealer bond of Road America Auto Sales, LLC, is APPROVED in the amount of \$1,858.45. International Fidelity Insurance Company shall pay Karen Pluskat this amount for her loss attributable to the actions of Road America Auto Sales, LLC.

Dated at Madison, Wisconsin on January 14, 2016.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705-5400
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: _____
Mark F. Kaiser
Administrative Law Judge